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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,048	12/01/2003	Malin E. Holcomb	100993.00005	2976
26710 7590 06/17/2008 QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			EXAMINER EDELL, JOSEPH F	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 06/17/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/725,048

**Applicant(s)**

HOLCOMB ET AL.

**Examiner**

Joseph F. Edell

**Art Unit**

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,8,10-13,15-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,10-13,15-18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

In view of the Board of Patent Appeals and Interference's decision entered on 07 March 2008 and Applicant's amendment entered 11 March 2008, PROSECUTION IS HEREBY REOPENED.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5, 7, 8, 12, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,257,664 B1 to Chew et al. in view of U.S. Patent No. 4,828,325 to Brooks.

Chew et al. disclose a seat back that is basically the same as that recited in claims 1, 5, 7, 8, 12, and 17 except that the cushion lacks a cover and an element attaching the cushion to the shell, as recited in the claims. See Figures 1-5 of Chew et al. for the teaching that the seat back has a shell 15 that is rigid and curved, a back panel 20 of the shell, a central portion (about channel 56) of the shell with one side from which a first lateral panel projects in a forward direction (as in Fig. 2) and with another side from which a second lateral panel projects in the forward direction, a first wing 19 adjustably fastened in a first position to the first lateral side, a second wing 19 adjustably fastened in a second position to the second lateral side, a cushion attached

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to the shell with a conformable body of resilient foam material (see column 3, lines 56-59) and including a central section adjacent the central portion of the shell and first and second lateral sections extending from the central portion adjacent the first and second wings, a fastener arrangement 17 to attach the shell to a frame, and a plurality of fasteners 26,32,34 of the fastener arrangement each adjustable along two axes and having a hook portion 34 for engaging the frame of a wheelchair.

Brooks shows a seat back similar to that of Chew et al. wherein the seat back has a shell 64 (Figs. 5 & 6), a cushion 106 (showing seat back or seat cushion - see column 5, lines 10-12) attached to the shell and having a body, a cover 48 of the cushion that is of stretchable material encasing the body (see column 5, lines 66-68 and column 6, lines 1-11), and an element 50 of the cushion that attaches the cushion to the shell. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat back of Chew et al. such that the cushion has a cover of stretchable material encasing the body and including an element that attaches the cushion to the shell, such as the seat back disclosed by Brooks. One would have been motivated to make such a modification in view of the suggestion in Brooks that the cover and element configuration of the cushion provides a stretchable cover with elements positively secured to the edges of the shell.

3. Claims 2-4, 13, 15, 16, 18, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chew et al. in view of Brooks as applied to claims 1, 5, 7, 8, 12, and 17 above, and further in view of U.S. Patent No. 5,370,444 to Stulik.

Chew et al., as modified, disclose a seat back that is basically the same as that recited in claims 2-4, 13, 15, 16, 18, and 20-22 except that the cushion lacks pleated first and second lateral sections, as recited in the claims. Stulik shows a seat back similar to that of Chew et al. wherein the cushion 10 (see Fig. 1) is attached to a shell 30,32 (see Fig. 2), a lateral section 12b,12c, and first and second surfaces of the body with first and second plurality of interleaving grooves 21 forming pleats. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seat back of Chew et al. such that the cushion has a first surface of the body with a first plurality of grooves extending vertically, a second surface of the body with a second plurality of grooves interleaved with the first grooves forming pleats enabling the body to stretch and conform with changes in the positions of the first and second wings wherein the first and second sections of the body stretch and contract with changes in positions of the first and second wings, such as the cushion disclosed in Stulik. One would have been motivated to make such a modification in view of the suggestion in Stulik that the cushion configuration allows for adjustability without requiring extensive cutting and sewing of parts. Moreover, *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (2007) set forth that "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill."

4. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chew et al. in view of U.S. Patent No. 5,556,168 to Dinsmoor, III et al.

Chew et al. disclose a seat back that is basically the same as that recited in claims 10 and 11 except that the fastener arrangement lacks a threaded fastener, as recited in the claims. Dinsmoor III, et al. show a seat back similar to that of Chew et al. wherein the seat back has a shell 10 (see Fig. 1), a cushion 100, and a fastener arrangement 20 to attach the shell to a frame 5 of a wheelchair, a plurality of fasteners of the fastener arrangement that each includes a bracket 26 (see Fig. 6) attached to the shell and a hook portion 22 separate from the bracket, a slot 36b of the bracket, an aperture of the hook (to accommodate fastener), a threaded fastener 34b passing through the slot into the aperture, and a . Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the each includes a bracket 26 (see Fig. 6) attached to the shell and a hook portion 22 separate from the bracket, a slot 36b of the bracket, an aperture (to accommodate fastener) of the hook, a threaded fastener 34b passing through the slot into the aperture, and a slot of the bracket through which a threaded fastener 19 passes into the shell. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat back of Chew et al. to include a bracket of each plurality of fasteners that is attached to the shell, the hook portion being separate from the bracket and has an aperture, the bracket has a slot, a threaded fastener passing through the slot into the aperture, and a slot of the bracket through which a threaded fastener passes into the shell, such as the seat back disclosed by Dinsmoor, III et al. One would have been motivated to make such a modification in

view of the suggestion in Dinsmoor, III et al. that the bracket and hook configuration of the plurality of fasteners provides a conveniently adjustable fastener arrangement.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Joseph F Edell/  
Primary Examiner, Art Unit 3636  
June 16, 2008

A Technology Center Director or designee has approved of reopening prosecution by signing below:

  
APPROVED BY DIRECTOR  
KATHERINE MATECKI